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PROTECTION FOR GOVERNMENT OFFICERS AND EMPLOYEES FROM LOSS OF BASIC COMPENSATION RESULTING FROM RECLASSIFICATION OF THEIR POSITIONS

JULY 28, 1955.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DAVIS of Georgia, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H. R. 3255]

The Committee on Post Office and Civil Service, to whom was referred the bill (H. R. 3255) to amend the Classification Act of 1949, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

COMMITTEE AMENDMENTS

The committee amended the introduced bill in two respects:

First, the committee amended the text of the bill by striking out all after the enacting clause and inserting in lieu thereof a new text which appears in the reported bill in italic type.

Second, the committee amended the title of the bill in order to indicate more accurately the contents of the text of the bill as amended by the committee.

STATEMENT

The purpose of the bill, as amended by the committee, is to provide protection against loss of basic compensation for certain officers and employees of the Federal Government and the municipal government of the District of Columbia holding positions subject to the Classification Act of 1949 which have been in the past, or will be in the future, placed in lower grades of any compensation schedule of such act pursuant to reclassification actions taken thereunder.

The bill in its reported form adds a new section 507 to title V of the Classification Act of 1949.

Subsection (a) of such new section 507 covers the case of an officer or employee subject to the Classification Act of 1949 who holds (on

or after the date of enactment of the new sec. 507) a position which is in certain of the grades of any basic compensation schedule contained in the Classification Act of 1949 and which is placed (on or after the date of enactment of the new sec. 507) in a lower grade of such basic compensation schedule pursuant to any reclassification of such position under authority of such act. Such subsection (*a*) provides that, notwithstanding such reclassification of his position, such officer or employee shall continue to receive basic compensation at the rate to which he was entitled immediately prior to such reclassification until he leaves such position or until he is entitled to receive basic compensation at a higher rate by reason of the operation of the provisions of the Classification Act of 1949. However, if and when such position becomes vacant, the rate of basic compensation of any individual subsequently appointed to fill the vacancy in such position shall be fixed and adjusted in accordance with the Classification Act of 1949 generally.

Subsection (b) of the new section 507 covers the case of any officer or employee subject to the Classification Act of 1949 who held continuously, during the period beginning on July 1, 1954, and ending immediately prior to the date of enactment of section 507, a position which was in certain of the grades of any basic compensation schedule contained in the Classification Act of 1949, which was placed, at any time during such period, in a lower grade of such basic compensation schedule pursuant to one or more reclassifications of such positions under authority of such act, and which, on the date of enactment of the new section 507, is subject to such act.

Such subsection (b) provides that, notwithstanding such reclassification of his position, such officer or employee shall be granted, effective as of the first day of the first pay period which begins after the date of enactment of section 507 (if he continues to hold such position on such first day of such first pay period), the rate of basic compensation to which he was entitled immediately prior to such reclassification of his position (or, in the case of more than one reclassification of such position, the date of the first of any such reclassifications) until one of the following circumstances occurs: (1) He leaves such position; or (2) he is entitled to receive basic compensation at a higher rate by reason of the operation of the provisions of the Classification Act of 1949. However, if and when such position becomes vacant, the rate of basic compensation of any individual subsequently appointed to fill the vacancy in such position shall be fixed and adjusted in accordance with the Classification Act of 1949 generally.

Subsection (b) of the new section 507 also provides that no officer or employee shall be entitled, by reason of such subsection (b), to basic compensation for any period prior to the first day of the first pay period which begins after the date of enactment of such section 507.

It should be observed—

(1) that subsections (a) and (b) of the new section 507 do not apply with respect to grades 16, 17, and 18 of the general schedule—the so-called supergrades;

(2) that such subsections (a) and (b) apply only with respect to officers and employees holding positions under career-conditional and career appointments in the classified (competitive) civil service of the United States;

(3) that such subsections (a) and (b) will not operate to protect the rate of basic compensation of an officer or employee unless he, in fact, is or was holding the position concerned at the time of the reclassification of such position to a lower grade and, in the case of an officer or employee covered by subsection (b), immediately prior to the date of enactment of such subsections;

(4) that such subsections (a) and (b) provide that such officer or employee shall have held such position for a continuous period of not less than 2 years ending, in the case of an officer or employee covered by subsection (a), immediately prior to such reclassification and, in the case of an officer or employee covered by subsection (b), immediately prior to the date of enactment of such subsections;

(5) that such subsections (a) and (b) require that such officer or employee shall have performed the work—that is, the duties and responsibilities—of the position concerned in a manner which is satisfactory or better than satisfactory; and

(6) that, under subsections (a) and (b), an officer or employee, whose rate of basic compensation is protected by reason of such subsections, shall not be eligible to receive any within-grade or longevity step increases under the Classification Act of 1949 so long as the protection of such subsections (a) and (b) apply to his rate of basic compensation. However, from and after the time when the rate of basic compensation of the officer or employee is no longer protected by reason of such subsections (for example, because he is appointed to another position in the same or another grade under the Classification Act of 1949), such officer or employee again shall be eligible to receive within-grade and longevity step increases.

An officer or employee whose rate of basic compensation is protected by reason of subsection (a) or (b) of the new section 507 shall not be eligible to receive any retroactive payment of compensation by reason of the enactment of such subsections.

The committee has considered the regulations issued by the Civil Service Commission effective July 23, 1955, and printed in the Federal Register for that date (pp. 5281-5283) which, the Commission has reported, are intended to protect Government officers and employees against loss of salary when their positions are reclassified downward. The committee deems such regulations inadequate to afford such officers and employees the necessary measure of protection, since they do not cover all such officers and employees who are entitled to this protection and would provide only temporary "savings" of compensation in any event. In the judgment of the committee, enactment of this legislation is essential to correct existing inequities in the form of reduced compensation, and to prevent such inequities in the future, arising from reclassification downward of positions held by employees who have served satisfactorily in such positions for periods of 2 years or more.

The report of the Civil Service Commission on H. R. 3255 and two similar bills follows:

 PROTECTION FOR EMPLOYEES FROM LOSS OF BASIC COMPENSATION

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., June 13, 1955.

Hon. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington 25, D. C.

DEAR MR. MURRAY: This is in reply to your letters of February 5, 1955, asking for the Commission's comments on H. R. 3085 and H. R. 3255, similar bills, to amend the Classification Act of 1949.

These bills would add a new section to title VI of the Classification Act of 1949, as amended. The new section would provide that employees occupying positions under the Classification Act which have been placed in a classification grade by the department in accordance with section 502 (a) of the act, and who have been performing the duties of their positions satisfactorily for a period of 2 years (H. R. 3085 prescribes a period of more than 2 years) and who thereafter are reduced from such grades by reason of the reallocation of their respective positions to lower grades, shall continue to receive the rates of compensation appropriate to the grade from which reduced. Both bills, H. R. 3085 through specific provision and H. R. 3255 through implication, would make the employees eligible to receive periodic and longevity step increases of such grade so long as they remain in the same positions. When any such position becomes vacant, the rate of basic compensation of any subsequent appointee would be fixed, in accordance with the Classification Act, at a rate fixed for the lower grade.

The Commission has made an extensive study of the problem of adjusting the pay of employees whose positions are downgraded. We are very much aware of the questions of equity and the difficulties of personal readjustment which arise from these grade reductions where a loss in pay is involved. On the basis of our study, we have concluded that we can take care of the problem within the normal administrative authority which the Commission has under the Classification Act. We are, therefore, considering the issuance of regulations which will reduce the hardships imposed upon employees under such circumstances. We believe that this approach will provide a more satisfactory solution than would result from enactment of H. R. 3085 or H. R. 3255; and accordingly, we recommend against their enactment.

The plan which the Commission is considering will permit a temporary period of salary retention for employees who are downgraded so as to allow ample time for possible reassignments and, if necessary, for personal readjustment. It may be applied not only to the employee who is changed to a lower grade due to the reallocation of his position but also to any other employee who is reduced in grade through no fault of his own with the exception of the employee whose downgrading is due to a reduction in force. The length of the period during which an existing salary rate may be retained will be geared to the length of the employee's service in the grade from which he is reduced. In this way the impact of the reduction will be minimized and longer service at the higher grade will be recognized. By permitting temporary salary retention for a wider variety of downgrading actions, lasting pay misalinement will be avoided, differences in treatment among employees who are reduced in grade will be minimized, and difficult administrative decisions will be eliminated.

We wish to explain why, in contrast, the salary retention provisions of H. R. 3085 and H. R. 3255 would cause unfair differences in the treatment of employees both as a direct result of the salary retention plan and as a result of the serious administrative difficulties which would be encountered in carrying out the plan.

These bills would provide salary retention for employees whose positions are regraded but not for other employees who are changed to lower grade. This would result in differences in treatment among employees which would be difficult to defend. Let us assume that there are two employees in an office occupying different GS–4 positions. One is performing typing and miscellaneous clerical work. The other is composing correspondence. Upon audit it is determined that the position of the former should properly be placed in grade GS–3. The employee's duties have not changed so upon being downgraded his salary is retained even though it is in excess of the maximum rate for the grade. The other employee's position is determined to be properly evaluated at GS–4. A month later the mission of the office is changed so that the need for the composition of correspondence is eliminated. The second employee is now assigned to duties identical with those performed by the first. This time, however, the change to lower grade is accompanied by a change in duties. Pay may not be saved above the rate range. This employee's pay then must be reduced at least to the maximum scheduled rate of GS–3. This would be true even though his salary in

GS–4 may have been higher than that enjoyed by the first employee and even though he may have been assigned to the correspondence work because he was considered the more able of the two. This is the type of practical problem in pay equity which results when salary retention is permitted in some downgrading actions but not in others. The action the Commission proposes to take administratively will cause some problems of this sort but we believe they will not be nearly so numerous as those which would be caused by H. R. 3085 and H. R. 3255.

Particularly undesirable in these bills is the feature which makes an employee whose pay has been preserved upon downgrading eligible for step increases in the higher grade. Saving the existing rate alone creates a lasting misalinement between the pay of the employee who is downgraded and that of others doing comparable work. The requirement that the employee be advanced through the steps of the higher grade, including the longevity steps, insures that the pay misalinement will become progressively worse.

These bills would not permit salary retention in cases of changes to lower grade which are accompanied by a material change in duties. The difficulty of determining whether there has or has not been a change in duties introduces a serious source of inequitable treatment of employees. Reliance has to be placed in the written record in making this determination although in some cases the record may show a change where there has, in fact, been none. For example, an employee occupies a position which has five important duties. The position is described showing, through misunderstanding, these five duties and a sixth duty. This sixth duty is grade controlling. The employee never performs this sixth duty. Two years later he is reduced in grade upon postaudit, either by the department or the Commission, because he does not perform the sixth duty. On the basis of the written record it is concluded that he is changed to lower grade because his duties have changed. He may contend, and rightly, that his duties have not changed. He will certainly feel that he has been unjustly treated if some other employee who is downgraded is allowed to retain his salary because it is decided there has, in his case, been no change in duties. This example makes the injustice obvious. In practice, varying degrees and types of differences can be found between the official description and the duties that the employee is found to be doing upon audit. Any effort to go behind the written record which may be several years old would involve elaborate investigations which in many cases we believe would prove fruitless.

To the difficulty of telling whether there has been a change in duties we must add the difficulty of telling what change is to be considered material or significant. Are changes in level of difficulty alone to be considered material and if so, only those changes which would make a full grade level difference in the position? How about changes in line of work? How about changes from one set of duties to another in the same line of work and at the same level of difficulty? There are differences of degree in all these possible changes which make consistent decisions difficult.

The provision of these bills which would require that an employee occupy the same position for 2 years prior to the date of the down-grading in order to be eligible for salary retention constitutes a special source of inequitable treatment for employees. The employee with long service in a high grade who is changed to the position which is to be regraded, perhaps due to a reorganization, a year before the regrading action may not have his pay saved while less deserving employees who have 2 years' service in the particular position must have their pay saved.

The mandatory feature of these bills is undesirable. It leaves departments with no opportunity to avoid what may be recognized as glaring inequities in pay alinement. By giving the employee a statutory right to the rates of the higher grade, it opens the door to time-consuming litigation over questions of personnel administration.

We believe that the salary retention regulations which we are considering will avoid many of these problems. Since it will provide for temporary pay saving for a period based upon the employee's length of service in the higher grade, it will not create lasting pay misalinement among employees doing comparable work. Because it will apply to a wider range of downgrading actions there will be markedly fewer questionable differences in treatment among employees whose grades are reduced. It will recognize service by means of varying the period of salary retention, and as a result will avoid arbitrary qualifying periods such as the 2-year period in the same position required by these bills. In the light of the advantages of the proposed administrative action and in the light of the

serious difficulties which we believe would arise under the bills, we recommend, as stated above, against enactment of H. R. 3085 and H. R. 3255.

We have been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

By direction of the Commission.

Sincerely yours,

PHILIP YOUNG, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CLASSIFICATION ACT OF 1949

TITLE VI—BASIC COMPENSATION SCHEDULES

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SEC. 605. Any increase in rate of basic compensation by reason of the enactment of this title shall not be regarded as an "equivalent increase" in compensation within the meaning of section 701.

SEC. 606. Employees occupying positions under this Act which have been placed in any of the classification grades in accordance with section 502 (a), and who have been performing the duties of such position satisfactorily for a period of two years, and who thereafter are reduced from such grades, by reason of the reallocation of their respective positions to lower grades, shall continue to receive the rates of basic compensation appropriate to the grade from which reduced so long as they remain in the same respective positions; but when any such position becomes vacant the rate of basic compensation of any subsequent appointee shall be fixed in accordance with this Act at the rate fixed for such lower grade.

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